

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
POUGHKEEPSIE DIVISION

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In re:

CHAPTER 7

ALAN G. FRIEDBERG,

Case No. 08-35875(cgm)

Debtor.

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CS-GRACES, LLC,

Plaintiff,

Adv. Proc. No. 08-

v.

ALAN G. FRIEDBERG,

Defendant.

-----X

COMPLAINT PURSUANT TO 11 U.S.C. §523  
REGARDING DISCHARGEABILITY OF DEBTS

CS-GRACES, LLC, Plaintiff herein, by Anthony C. Carlini, Jr., Esq., and Lewis D. Wrobel, its attorneys, complaining of the Defendant, alleges:

1. Plaintiff is a creditor of Defendant/Debtor, ALAN G. FRIEDBERG ("Defendant" or "Debtor"), with an address of 47 North Main Street, Ellenville, New York.
2. Defendant, ALAN G. FRIEDBERG, is the debtor in this Chapter 7 case.
3. This is a core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §157(a)(2)(I).
4. On April 27, 2008, an Order for Relief under Chapter 7 of the Bankruptcy Code was entered upon a Petition filed by the Defendant.

5. This complaint seeks a determination that the debts owed by the Defendant to Plaintiff are nondischargeable pursuant to 11 U.S.C. §523.

#### FACTUAL ALLEGATIONS

6. CS-GRACES, LLC (“CS-Graces”) is a New York limited liability company with its principal offices in Ellenville, New York.

7. RH LODGING SERVICES, LLC (“RH Lodging”) is a New York limited liability company with its principal offices in Rock Hill, New York.

8. At all relevant times, Defendant was the Manager of RH Lodging.

9. Upon information and belief, the SHERYL SMUL GRANTOR ANNUITY TRUST (“Smul Trust”) is a Florida Trust with an address of 12351 NW 2<sup>nd</sup> Street, Plantation, Florida 33325.

10. The members of CS-Graces are Joseph Tso, Lana Tso, Cecelia Tso and Stanley Tso.

11. Prior to January 1, 2006, the sole members of RH Lodging were the Smul Trust and CS-Graces, each owning a fifty (50%) percent membership interest therein.

12. Upon information and belief, Debtor is the brother of Sheryl Smul, the settlor of the Smul Trust, and is also a beneficiary of the Trust.

13. Upon information and belief, the Debtor wholly controlled the actions of the Smul Trust and was its “alter ego.”

14. On January 1, 2006, the Smul Trust, CS-Graces and RH Lodging entered into an agreement whereby the Smul Trust transferred its fifty (50%) percent membership interest in RH Lodging to CS-Graces. A copy of the Agreement is annexed hereto as **Exhibit “A”**.

15. In exchange for the transfer of the fifty (50%) percent membership interest from the Smul Trust to CS-Graces, substantial consideration, exceeding \$1,000,000.00, was exchanged between the parties (see Agreement paragraphs 2 and 3).

16. Upon information and belief, Debtor entered into a Loan Agreement with Greenstreet Financial, L.P. (“Greenstreet”), a Delaware limited partnership, on December 22, 2004, whereby Greenstreet lent Debtor the sum of \$1,000,000.00.

17. Upon information and belief, the loan between Debtor and Greenstreet was secured, in part, by a Commercial Security Agreement dated December 22, 2004, entered into between the Smul Trust as Grantor and Greenstreet as lender (“the Smul Security Agreement”).

18. Pursuant to the Smul Security Agreement, Ms. Smul, as Trustee of the Smul Trust, granted to Greenstreet a security interest in, among other property of the Smul Trust, collateral consisting of the Smul Trust’s fifty (50%) percent membership interest in RH Lodging.

**FIRST COUNT:**

**THE DEBT IS NON-DISCHARGEABLE PURSUANT TO 523(a)(2)(A)**

19. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “18” of this Complaint with the same force and effect as if the same were set forth at length herein.

20. On January 1, 2006, when the Debtor negotiated the Agreement between the Smul Trust and CS-Graces, it knew that the Trust’s fifty (50%) percent interest in RH Lodging was encumbered by the Security Agreement and lien of Greenstreet.

21. The Debtor failed to disclose this lien, which was in existence for over one year, and in fact represented that the Smul Trust fifty (50%) percent membership interest in RH

Lodging was being conveyed free and clear of all liens.

22. Debtor knowingly misrepresented and defrauded CS-Graces by claiming that the Smul Trust fifty (50%) percent membership interest was equal in value to the consideration given to Debtor by CS-Graces and CS-Graces members.

23. CS-Graces and its members relied upon the misrepresentations made by Debtor.

24. Upon information and belief, Debtor personally benefitted from the transaction and the fraud perpetrated upon CS-Graces.

25. As a result of the fraud perpetrated by Debtor, CS-Graces has suffered substantial damages.

**SECOND COUNT:**

**THE DEBT IS NON-DISCHARGEABLE PURSUANT TO 523(a)(4)**

26. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "25" of this Complaint with the same force and effect as if the same were set forth at length herein.

27. CS-Graces and Debtor, through his control of the Smul Trust and as manager of RH Lodgings, owned and operated RH Lodgings and its business.

28. As such, Debtor was a fiduciary and owed a fiduciary duty to CS-Graces.

29. Debtor breached his fiduciary duty by failing to inform CS-Graces or its members of the Greenstreet loan and Smul Security Agreement.

30. As a result of Debtor's breach of fiduciary duty, CS-Graces has been substantially damaged.

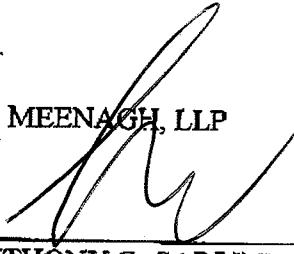
31. The debt owed by Debtor to CS-Graces is therefore non-dischargeable pursuant to 523(a)(4).

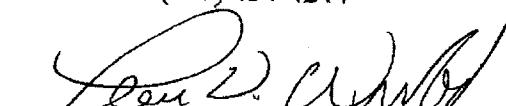
DATED: Poughkeepsie, New York  
July 28, 2008

Yours, etc.

KELLY & MEENAGH, LLP

BY:

  
ANTHONY C. CARLINI, JR. (AC4818)  
Attorneys for Plaintiff  
Office and P. O. Address  
135 North Water Street  
P.O. Box 1031  
Poughkeepsie, New York 12602  
Tel. No. (845) 454-4244

  
LEWIS D. WROBEL, ESQ.  
Attorney for Plaintiff  
12 Raymond Avenue  
Poughkeepsie, New York 12603  
Tel. No. (845) 473-5411